IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6033 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SANABHAI DHULABHAI MAKWANA

Appearance:

MRS VASAVDATTA BHATT for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/10/2001

ORAL JUDGEMENT

#. This petition has already been admitted and with the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - Corporation has challenged the award passed by the Industrial Tribunal, Vadodara dated 19.11.1999 by which the Tribunal interfered with the order of punishment passed by the petitioner Corporation and the Tribunal passed the order to the effect that the

concerned workman should be subjected to the penalty of withholding of five increments without future effect.

#. The respondent workman was appointed as Conductor in the S.T.Corporation. At the relevant time while he was on duty it was found that, he had not issued the tickets to certain passengers. Ultimately, he was subjected to the departmental proceedings and after conclusion of the said inquiry, the Corporation imposed the penalty of withholding of five increments with future effect. The respondent workman thereafter raised the industrial dispute. The said dispute was referred to the Industrial Tribunal, Vadodara and the same was numbered as Reference I.T.No.12 of 1995. Before the Tribunal, it was argued on behalf of the respondent workman that he was on duty on the bus which was a city bus and since there was a very short distance between one stand and the other stand and since the bus was over crowded, the respondent workman could not issue the tickets to certain passengers. It was his case that, he had not collected the fare from certain passengers for want of time. The Tribunal after considering the submissions of both the sides ultimately came to the conclusion that the workman was on duty in the bus which was city bus and since the distance between two stands was very short one and since there were 70 passengers in the bus which included the members of the staff as well as some police personnel, the respondent workman could not issue the tickets to certain passengers. It was observed by the Tribunal that the concerned workman was no doubt negligent, but the penalty awarded to him is on higher side as compared to the misconduct which is proved against him. Ultimately, the Tribunal interfered with the said penalty and substituted the same by withholding of five increments without future effect. The said order is challenged in this petition at the instance of the petitioner-Corporation.

#. It was argued by Ms.Bhatt for the petitioner-Corporation that since the respondent workman failed to issue the tickets to certain passengers, and ultimately in the inquiry, the said misconduct was proved and appropriate punishment was awarded by the petitioner-Corporation, this was not a case in which the Industrial Tribunal should have exercised the powers under section 11-A of the Industrial Disputes Act.

#. On the other-hand, Mr.J.S.Brahmbhatt, learned advocate for the respondent workman, strongly argued that this is not a case in which the respondent workman has misappropriated any amount. He submitted that, the Industrial Tribunal has considered the facts and

circumstances of the case, and therefore, has rightly interfered with the penalty order. He submitted that, therefore, this Court should not interfere with the aforesaid order of the Industrial Tribunal in a petition which is under Article 226/227 of the Constitution of India.

#. Considering the aforesaid arguments of both the sides and considering the reasoning given by the Industrial Tribunal, I am of the opinion that, non-issuance of the tickets to the passengers is also a serious type of misconduct. It is no doubt true that, as per the case papers, misconduct which is proved against the respondent workman is non-issuance of the tickets and it is not found that he has misappropriated any amount, but in any case, by the aforesaid misconduct, the petitioner-Corporation has suffered monetary loss. It is also required to be noted that, it is the duty of the Conductor - respondent workman to see that he should collect the fare from all the passengers travelling in the bus, so that, no one can travel without paying the fare. In my view, therefore, some stringent penalty was required to be imposed by the Industrial Tribunal instead of awarding the punishment of withholding of five increments without future effect. It is required to be noted that, the penalty should be imposed in such a manner that the concerned person may not try to repeat the said misconduct again and there may be some deterrent effect on him. The penalty substituted by the Industrial Tribunal is, therefore, not adequate. In the facts and circumstances of the case, the respondent workman should be subjected to the penalty of withholding of three increments with future effect.

#. In view of what is stated above, the award of the Industrial Tribunal is modified and the respondent workman will be subjected to the penalty of withholding of three increments with future effect. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)